

BRB No. 98-0903

ROBERT SCHODEBERG	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MARINETTE MARINE	)	DATE ISSUED:
CORPORATION	)	
	)	
and	)	
	)	
CRUM & FORSTER	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Robert G. Mahony, Administrative Law Judge, United States Department of Labor.

Timothy A. Little and James Courtney, III, Duluth, Minnesota, for claimant.

Joseph J. Ferris (Kasdorf, Lewis & Swietlik, S.C.), Green Bay, Wisconsin, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (97-LHC-0177) of Administrative Law Judge Robert G. Mahony denying benefits on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, employed as a shipbuilder, injured his left shoulder while performing some welding work for employer on April 2, 1996. Drs. Martens, Mack, Bragonier, Bowman, Barnes, and Grace all found that claimant had an acromial-clavicular (A-C) joint separation after the work injury. Claimant was initially removed from work by Dr. Mack on April 6, 1996, and was released to return to work, without limitations, by Dr. Bragonier, effective June 15, 1996. Dr. Grace removed claimant from work in order to perform a left shoulder A-C joint reconstruction on November 13, 1996, and subsequently placed claimant on light duty work as of February 3, 1997, for two weeks. He released claimant to full duty thereafter. Employer paid claimant intermittent temporary total disability benefits through August 21, 1996. Claimant previously sustained a non-work-related left shoulder strain with possible dislocation on July 24, 1995. This injury occurred prior to the time that claimant was hired by employer in March 1996.

Claimant filed the instant claim seeking additional compensation for temporary total disability benefits from August 22, 1996, through April 1, 1997, the date he found alternate work, plus medical expenses. Employer maintains that claimant merely strained his shoulder as a result of his April 2, 1996, accident, and thus that any defect thereafter was due to the normal progression of the prior injury. Consequently, employer argued that the surgery and resulting period of recuperation were not necessitated by the April 2, 1996, injury.

The administrative law judge determined that the shoulder injury of April 2, 1996, resolved as of June 16, 1996, and thus, did not result in a compensable disability after that date. Accordingly, benefits were denied. On appeal, claimant challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance.

Claimant argues that contrary to the administrative law judge's determination, the work-related injury of April 2, 1996, combined with, and/or aggravated his chronic pre-existing shoulder condition to create the need for surgery and bring about the onset of claimant's disability. Claimant further argues that employer has not met its burden of showing that his disability subsequent to June 16, 1996, is entirely due to his pre-existing left shoulder condition, and thus, is completely unrelated to his April 2, 1996, work accident.

Noting that employer does not challenge the fact that claimant sustained a work injury on April 2, 1996, the administrative law judge initially determined that claimant established his *prima facie* case for application of the Section 20(a) presumption linking claimant's shoulder condition to the work accident. See *Bolden*

*v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157 (1990). The administrative law judge then considered employer's contention that the work injury on April 2, 1996, had resolved and that claimant was able to return to his regular duties on June 16, 1996, such that claimant is not entitled to any additional benefits.

In addressing the relevant evidence of record, the administrative law judge accorded greater weight to the medical opinion of Dr. Gmeiner as he found it to be well reasoned and detailed. Dr. Gmeiner opined, based upon his physical evaluation of claimant and review of claimant's medical history, including x-rays from previous shoulder injuries, that claimant had, at most, a mild left shoulder strain as a result of the April 2, 1996, accident, and thus, that claimant's work accident resulted in a temporary aggravation of a pre-existing condition that resolved by June 16, 1996. Dr. Gmeiner further noted that a review of claimant's x-rays revealed chronic changes in his shoulder joint and not an acute problem or dislocation from the work accident. As a result of these chronic changes, unrelated to his work injury, Dr. Gmeiner stated that claimant's left shoulder joint || is always partially dislocated.= Employer's Exhibit 1. He specifically stated that the work accident did not aggravate or accelerate claimant's pre-existing condition. *See generally Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997). Moreover, Dr. Gmeiner stated that the surgery performed on claimant's left shoulder was done to address the problems associated with his pre-existing condition and not those related to his work injury. Dr. Gmeiner also explained that claimant's particular injury, *i.e.*, the A-C separation, is typically associated with a violent force that disrupts the joint, and therefore, he did not believe that claimant developed this shoulder injury as a result of welding overhead while lying on his left side. Dr. Gmeiner's assessment is bolstered by the fact that Dr. Bragonier released claimant to return to work, without limitations, effective June 15, 1996. In contrast, the administrative law judge rejected the opinion of Dr. Grace,<sup>1</sup> that claimant sustained a work-related traumatic injury to the A-C joint which required surgery in November 1996, as it is unclear

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<sup>1</sup>While claimant correctly notes that, contrary to the administrative law judge's statement, Dr. Grace opined that the dislocation claimant sustained in the summer of 1995 had healed to the point where claimant *could*, rather than *could not* return to welding work until his April 2, 1996, injury, this error is harmless as it does not serve as the basis for the administrative law judge's rejection of Dr. Grace's opinion on causation.

whether he had any knowledge of claimant's prior shoulder injuries at the time he performed the surgery or made an assessment as to the cause of claimant's injury.<sup>2</sup>

In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge may draw his own inferences and conclusions from the evidence. See *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). In the instant case, the administrative law judge's decision to credit the opinion of Dr. Gmeiner over the contrary opinion of Dr. Grace is not irrational. *Id.* We therefore affirm the administrative law judge's determination that after June 16, 1996, claimant's left shoulder condition is not causally related to his April 2, 1996, accident, as that finding is supported by substantial evidence. See *Duhagon*, 31 BRBS at 98; *Rochester v. George Washington University*, 30 BRBS 233 (1997). Moreover, the administrative law judge's denial of medical benefits related to his shoulder surgery is affirmed, as the administrative law judge rationally concluded that claimant's work-related left shoulder injury had resolved, and that the subsequent surgery and corresponding treatment did not result from claimant's work injury. See *Brooks v. Newport News Shipbuilding Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100 (CRT) (4th Cir. 1993).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

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<sup>2</sup>Specifically, Dr. Grace's notes upon his initial examination of claimant on June 4, 1996, indicate claimant's medical and surgical history as unremarkable. Claimant's Exhibits 1, 4. Additionally, his surgical admission notes do not mention any of claimant's prior shoulder injuries. *Id.*

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge